IN THE HIGH COURT OF DELHI

C.M. (M) No.1844-46/2005

M/s Apex Apartments Pvt. Ltd & Ors. ..... Petitioners
through: Mr.Arun Vohra, Advocate

VERSUS

$ Shri Narender Arora ..... Respondent
through: Mr.Prag Chawla, Advocate

% DATE OF DECISION: 19.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

1. This petition is directed against the order dated 5.8.05 passed by the Additional District Judge, Delhi whereby application of the petitioner under Order VIII Rule 1-A(3) read with Order XIV Rule 8 and Section 151 CPC seeking leave to file additional documents was dismissed.

2. Petitioner no.1, M/s Apex Apartments is a company incorporated under the Indian Companies Act 1956 engaged in the business of construction of residential and commercial buildings and petitioners nos. 2 and 3 are its directors.

3. Petitioners are the defendants in the suit filed by the respondent for the relief of decree of specific performance of the contract, mandatory and permanent injunction and damages.

4. It was pleaded in the plaint that the defendants advertised for the sale of 16 flats to be constructed on the plot bearing No.E-480, Greater Kailash-II, New Delhi. That the plaintiff decided to purchase one of the said proposed 16 flats i.e. Unit No.UG-2, E-480, Greater Kailash-II, New Delhi. An agreement to sell dated 13.1.1988 was entered into between the plaintiff and defendants for a total sale consideration of Rs.9,50,000/-. A sum of Rs.1,10,000/- was paid by the plaintiff at the time of the execution of the agreement. That as per the terms of the agreement, balance sale consideration was to be paid commensurate with the construction of the flat. That the plaintiff made a total payment of Rs.5,40,000/-. That some payments were made by cheques and some in cash. That the defendants failed to perform their part of obligation under the agreement.

5. In the written statement the defendants denied the averments made in the plaint and pleaded that the payment of the balance sale consideration was not to commensurate with the construction of the flat but was to be paid in accordance with Schedule A of the agreement. That the plaintiff defaulted in making payment of the balance sale consideration. That 'time of payment of

balance sale consideration was the essence of the agreement' and therefore by defaulting in making necessary payments the plaintiff breached the agreement.

6. After pleadings were completed, parties filed respective documents. Issues were framed and plaintiff commenced evidence. On behalf of the plaintiff, Ms. Charita Arora, PW-1, wife of the plaintiff was examined and thereafter plaintiff's evidence was closed.

7. At this stage defendants moved an application under Order VIII Rule 1-A(3) read with Order XIV Rule 8 and Section 151 CPC seeking leave to file additional documents. The documents sought to be filed were certified Copies of Form C dated 5.1.88, Form D dated 7.12.88 issued by the MCD relating to the premises bearing No. E-480, G.K.-II, New Delhi, certified copy of the Extract of the Inspection Register of the MCD, House Tax Department dated 2.1.88 and certified copies of the Ledger Book of the defendant, M/s Apex Apartments Pvt. Ltd. Reason for filing the documents as pleaded in application are as under :-

> “3. That although in the pleading the Plaintiff has not raised the specific plea regarding the stage and date of the construction of the suit property, and the Plaintiff has not filed any replication denying the statement made by the Defendants in their Written Statement that the Defendant no.1 had already completed the suit premises but for a few finishing touches, but PW 1 in her evidence deposed contrary to the pleadings.
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> x x x x x

> 5. That during the course of the cross examination of PW1 it was for the first time alleged by PW1 that the construction was not being carried out at full swing during the period of June 1988 onwards.
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> x x x x x
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> 7. That at the time of framing of the issues it had not been advised by the counsel of the Defendants to file the above said records of the Municipal Corporation of Delhi regarding the building in question, as in the pleading the Plaintiff had not specifically raised the dispute regarding the date and stage of the construction, but in the cross examination the Plaintiff for the first time raised the allegations regarding the date and stage of the construction.
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> x x x x x
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> 9. That Certified Copy of the Ledger Book was not available, and nor in the possession of the Defendants as the Ledger Book of the Defendant no.1 Company is lying in the Court of Shri Digvinay Singh, M.M., since 1992, and the certified copies of the same has been obtained now by the Defendants. The said Ledger Book has been in the custody of the Court much prior to the filing of the present suit by the Plaintiff, and the copy of which the Defendants want to place on record are beyond any reasonable doubt."

8. Vide impugned order dated 5.8.05 the learned ADJ dismissed the application on the ground that the defendants had sufficient opportunity for filing the documents at the appropriate stage.

9. In support of the petition, learned counsel for the petitioners/defendants contended that the harmonious construction of Order Order VIII Rule 1-A(3) read with Order XIV Rule 8 makes it

clear that the court has the power to receive documents produced subsequent to the filing of the written statement and even in the absence of any good cause being shown for the delay in production if the Court is satisfied that the said documents are necessary for proper determination of the controversy between the parties, the Court could receive the same. That the learned Judge should have permitted the petitioners to file additional documents as they are having material bearing on the questions in controversy between the parties. Reliance was placed upon the following judgments :-

i. *Nanjunda Setty v Tallam Subharaya Setty & Ors* ILR 2004 Kar 924.

ii. *Gullipalli Naram Naidu v Kinthal Kumaraswami* AIR 2003 AP 481.

iii. *Santveer Singh v Addl. Civil Judge & Anr* AIR 2004 Raj 214.

iv. *Rajah R V G K Ranga Rao & Anr v Nizams Sugars Ltd* 2004 (1) ALD 387.

v. *Dugapati Sudhakar Reddy & Anr. v Avulapati Shankar Reddy & Ors.* 2005 (2) ALT 417.

vi. *Billa Jagan Mohan Reddy & Anr. v Billa Sanjeeva Reddy & Ors* (1994) 4 SCC 659.

vii. *Setti Siddamma v S. Ramulu & Anr.* 2004 (5) ALD 14.

viii. *Mohammed Yousuf v Lakshmi & Ors* 2003 (3) Kar LJ 554.

ix. *Ivy Muriet Fonesca v Porus Adi Doctor* 2005 (4) BomCR 342.

x. *Rasmos Impex Pvt Ltd v Rajan & Co & Ors* 110 (2004) DLT 605.

xi. *P. Raghu & Ors v K. Anjaiah* 2004 (1) ALD 366.

10. The law relating to production of documents in civil proceedings was drastically changed by the Amendment Act of 1999 and 2002.

11. Noting the relevant provisions in the CPC before and subsequent to the Amendment Act 1999 and 2002 including the provisions relied upon by the petitioners, the Karnataka High Court in the decision reported as *Nanjunda Setty v Tallam Subbaraya Setty & Sons & Ors* ILR 2004 Kar 924 observed as under :-

> "19. Therefore, what follows from the aforesaid discussion is the documents on which the parties rely on in support of their case could be broadly classified as under:
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> 1. Document upon the plaintiff sues/document upon which the defendant bases his defence;
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> 2. Documents in possession or power of the plaintiff/defendant in support of his claim/defence on which they rely on;
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> 3. The original of documents mentioned at (1) and (2) supra;
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> (4) Documents on which the parties rely on and which are not in their possession or power;
>
> (5) The documents on which the parties rely on incidentally but not to support their claim or defence and documents to disprove the claim or defence of the

opposite party.

(6) The documents which come into existence after the pleadings are filed into Court.

20. The documents belonging to category (1) and (2), if they are not produced along with the pleadings shall not be received in evidence without the leave of the Court at the hearing of the suit. Documents of category (3) shall be filed on or before settlement of issues. Documents (4), (5) and (6) could be filed along with the affidavit. Therefore, it is clear that if documents belonging to Category (1) and (2) are not produced along with the pleadings and documents at Category No. 3 are not produced at or before settlement of issues and documents mentioned in Categories (4) and (5) are not produced along with affidavit, the party loses a right to produce those documents at the subsequent stage of hearing of the suit.....”

12. Production of documents at the appropriate time and stage is the rule. Receiving documents at the subsequent stage of the hearing is an exception. Relevancy of documents coupled with the sufficiency of cause which prevented the party from filing the documents at an appropriate stage and the prejudice which will be caused to the opposite party if document is allowed to be filed at the subsequent stage have to be considered in totality with weightage to all the 3 limbs while considering a plea for filing documents at a subsequent stage of the proceedings.

13. The legality of the impugned order is to be tested on the anvil of law as aforenoted.

14. It is not in dispute that the additional documents sought to be filed by the petitioners fall in category two i.e. (i) Documents in possession or power of the plaintiff/defendant in support of his

claim/defence on which they rely on and (ii) should have been filed along with the written statement.

15. As already noted in para 7 above, petitioners sought to file documents viz. certified copies of Form C dated 5.1.88, Form D dated 7.12.88 and Extract of the Inspection Register of the MCD, House Tax Department dated 2.1.88 on the ground that the plaintiff did not take the plea in the plaint that the construction of flat in question was being done at a slow pace by the petitioners during the period of June 1988 onwards. That this plea was first time raised by the Ms.Charita Arora in her testimony as PW-1. That their counsel had advised them to file the said documents only when the plea relating to status of construction of flat was raised by the plaintiff. That the said documents are relevant for deciding this controversy in as much as the documents would show the status of construction of flats in question.

16. In order to determine the sufficiency of the cause as shown by the petitioners, it is necessary to note the plaint filed by the plaintiff. Relevant portion of the plaint reads as under :-

> "3. That acting on the representation of the defendants, the plaintiff made a booking with the defendant No. 1 of one of the said proposed 16 flats, namely Unit No. UG-2, in property No. E-480, Greater Kailash-II, New Delhi paying thereunder a sum of Rs.60,000/- in cash and a sum of Rs.50,000/- by way of cheque No. 992964 on 18.1.88 and an agreement to sell dt. 30.1.88 was entered into by the plaintiff with the defendant no.1 through defendants no. 2 and 3 respectively for a total sale consideration of Rs.9,50,000/-.

After the aforementioned advance payment of Rs.1,10,000/- the balance price was to be paid in installments relating to the completion of various stages of construction of the said building or as per the details of payment as given in Schedule A of the said agreement to sell. The plaintiff made a total payment of Rs.5,40,000/- to the defendant no.1 in respect of the said booking of the said flat vide cheques and cash as detailed herein under:

Date of Payment	Mode of Payment	Amount
18.1.88	Cash	Rs.60,000/-
18.1.88	by Ch.No.992964	Rs.50,000/-
3.2.88	by Ch.No.992973	Rs.55,000/-
17.3.88	by Ch.No.992977	Rs.55,000/-
14.4.88	by Ch.No.992984	Rs.55,000/-
28.5.88	by Ch.No.992988	Rs.55,000/-
20.6.88	by Ch.No.992987	Rs.55,000/-
16.9.88	by draft	Rs.55,000/-
24.10.88	Cash	Rs.1,00,000/-
		Rs.5,40,000/-

4. That after making the aforementioned payments, the plaintiff followed up with the defendants requesting them to expeditiously complete the building and hand over the possession of the said flat booked by the plaintiff. Thereafter the plaintiff was settled in Canada and his representative was used to follow up with the defendants regarding completion of the building and making necessary payments thereafter. Since the progress of the construction of the building was not satisfactory, the plaintiff though made substantial payment towards the sale consideration was constrained to stop the payment of further installments."

17. The afore-noted paras of the plaint (particularly the underlined portion) show that the suit of the plaintiff is based on the premise that the defendant failed to perform its part of obligation

under the agreement by not constructing the flat in a satisfactory manner. It therefore cannot be said that the plea relating to the status of construction of the flat was not raised in the plaint and for the first time introduced in the testimony of PW-1. Further, in the plaint averments have been made about some payments made in cash.

18. In so far as the certified copies of the Ledger Book of the defendant, M/s Apex Apartments Pvt. Ltd is concerned, cause shown by the petitioners for the delay in filing is that the said account books were seized by the Delhi Police during the course of investigation in another matter and are in the custody of the concerned Court of Metropolitan Magistrate, Delhi since the year 1992.

19. The petitioners were aware about the factum of seizure and custody of the said documents by the Court of Metropolitan Magistrate even at the time of filing of the written statement. Had the petitioners been diligent, they would have obtained the certified copy of the document and should have filed the same along with the written statement itself.

20. Therefore, the cause shown by the petitioners for the delay in filing the said documents cannot be deemed to be a '*sufficient cause*'.

21. A party adduces its evidence in the light of pleadings and

documents filed by the other party. Serious prejudice may be caused to the party which has led its evidence by allowing the opposite party to file additional evidence thereafter.

22. As noted in the decision in Nanjunda Setty's case (supra), literacy levels being low in this country, courts have adopted a liberal approach while considering a prayer to file additional documents.

23. But where litigating parties suffer no handicap of legal awareness or inadequacy of legal knowledge issue has to be decided accordingly.

24. In the instant case, petitioner company is a company incorporated under the Indian Companies Act. It has best lawyers at its disposal. Petitioner company was conscious that the plaintiff has raised a plea in the plaint relating to stage of construction. The fact they are builders give them all the more awareness as to proof of stage of construction.

25. Falsification of record pertaining to constructions has been noticed in number of judicial pronouncements. It has also been noted that false form C and form D are issued in respect of buildings construction of which are yet to be completed in all respects. Forging of accounts by a company is also not uncommon.

26. Had these documents filed at the initial stage by the petitioners, plaintiff would have got an adequate opportunity to lead

the evidence keeping in view that the defence would be predicated on proof of said documents.

27. The suit was filed in the year 1997. We are in the year 2007. 10 years have gone by. If defendants i.e. petitioners have to be granted an opportunity to file the documents, an opportunity would also be required to be given to the plaintiff to file documents and lead evidence. The suit would thus be relegated to the initial stage i.e. stage immediately after issues are framed. Noting that the suit is pending for 10 years, in my opinion it would be unfair to the plaintiff to relegate the suit to the stage when issues are framed.

28. The impugned order dated 05.08.05 thus does not suffer from any infirmity.

29. The petition is accordingly dismissed.

30. No costs.

November 19 , 2007 PRADEEP NANDRAJOG
vg JUDGE